## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

| JACQUELINE L. BUTLER,  | )                           |
|--|-----------------------------|
| Plaintiff,   | )                           |
| vs.  | ) Case No. 4:18-CV-1551 PLC |
| NANCY A. BERRYHILL,  | )                           |
| Deputy Commissioner of Operations, Social Security Administration, | )                           |
| Defendant.   | )                           |

## **MEMORANDUM AND ORDER**

This case is before the Court on the motion filed by Defendant Nancy A. Berryhill, Deputy Commissioner of Operations, Social Security Administration, to reverse the decision of the administrative law judge (ALJ) and remand the case to Defendant for further administrative action pursuant to sentence four of section 405(g) of the Social Security Act, 42 U.S.C. § 405(g). [ECF No. 20] Plaintiff responded, stating "no objection" to Defendant's motion to reverse and remand. [ECF No. 21]

On September 14, 2018, Plaintiff filed a complaint seeking review of Defendant's final decision, the ALJ's decision, denying Plaintiff's application for Supplemental Security Income benefits under the Social Security Act. [ECF No. 1] Defendant filed her answer and a transcript of the administrative proceedings, and Plaintiff filed a brief in support of the complaint, as well as a statement of uncontroverted material facts. [ECF Nos. 13, 14, 15, 15-1]

In her brief, Plaintiff asserted that the ALJ erred in failing to apply the "Borderline Age Policy" set forth in 20 C.F.R. § 416.963.<sup>1</sup> [ECF No. 15] Plaintiff stated that, at the time of the

<sup>&</sup>lt;sup>1</sup> The policy provides the ALJs some latitude in the application of the Medical-Vocational

ALJ's decision, she "was five months away from a higher age category (advanced age) that would have – considering her RFC (light exertion), education (high school), and work experience (unskilled) – resulted in a finding of disability." [Id. at 5] Plaintiff claims that the ALJ's determination that she was not disabled "turned on her age" and "the ALJ did not articulate consideration of the Borderline Age Policy." [Id. at 4]

Defendant filed the instant motion to reverse and remand the case for further action under sentence four of section 405(g) of the Social Security Act, which authorizes a court to enter "a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). See also Buckner v. Apfel, 213 F.3d 1006, 1010 (8th Cir. 2000). Defendant represents that, upon review of the record, agency counsel determined that remand is necessary "to provide the ALJ an opportunity to further evaluate Plaintiff's claim." More specifically, Defendant states: "On remand, the ALJ will further evaluate whether Plaintiff was in a borderline age situation under the Medical-Vocational Guidelines, 20 C.F.R. pt 404, subpt. P, app. 2, and which medical-vocational rule to apply."

Upon review of Plaintiff's brief in support of her complaint, the ALJ's decision, and Defendant's motion, the Court agrees with the parties that this case should be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings.

Accordingly,

IT IS HEREBY ORDERED that Defendant's motion to reverse and remand [ECF No. 20] is **GRANTED**.

Guidelines, 20 C.F.R. Part 404, Subpart P, Appendix 2 and states that Defendant "will not apply the age categories mechanically in a borderline situation." 20 C.F.R. § 416.963(b). Rather, an ALJ is to "consider whether to use the older age category after evaluating the overall impact of all the facts" in the claimant's case. <u>Id.</u> A claimant falls within the borderline age category if he or she is "within a few days to a few months of reaching the older age category." <u>Id.</u>

IT IS FURTHER ORDERED that the final decision of the Commissioner is **REVERSED** and **REMANDED** under sentence four of 42 U.S.C. § 405(g) for reconsideration and further proceedings consistent with this opinion.

A separate judgment in accordance with this Memorandum and Order is entered this date.

PATRICIA L. COHEN

UNITED STATES MAGISTRATE JUDGE

Dated this 13th day of March, 2019